IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY THE EIGHTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 7774 of 2005

Between:

M/s.Crane Betel Nut Powder Works. Proprietor Sri Grandhi Subba Rao Ramanama
Kshetram Street, Sampath Nagar, Post Box 301, Guntur-522004, represented by its authorised person Mr.G.V.S.L.Kantha Rao, S/o.Sri Grandhi Subba Rao.

..... PETITIONER

AND

1 Union of India, represented by its Secretary, Ministry of Finance, New Delhi.
2 The Chief Commissioner, Customs & Central Excise, South Zone, Visakhapatnam.
3 The Commissioner of Customs & Central Excise, Tirupathi (Holding addl. Charge of
Guntur Commissionarate)
4 The Assistant Commissioner, Customs & Central Excise, Guntur Division, 2/17, Brodipet, Opp.B.H.College, Guntur.
5 The Superintendent of Central Excise, Range-I, 2/17, Bridipet, Guntur.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue writ of Mandamus or other appropriate writ, order or direction to the Respondents NOt to Alter the Classification, pending the disposal of the Appeal, filed by the Respondents before the Tribunal, Bangalore, as there is No change in the "Tariff" in the 2005-2006 Budget, as alleged by the Respondents and further declare the actions of the Respondents against the petitioner as illegal, arbitrary, unconstitutional and violation of principles of natural justice and pass such other

orders/orders as this Hon'ble court may deem fit and proper in the interest of justice.

Counsel for the Petitioner: MR.M.NAGA RAGHU

Counsel for the Respondents: MR.A.RAJASHEKAR REDDY (ASST.SOLICITOR GEN.)

The Court made the following:

ORAL ORDER: (per GB. J.)

The Writ Petition is filed seeking Writ of Mandamus directing the authorities not to alter the classification, pending disposal of the appeal filed by the respondents before the Tribunal, Bangalore, as there is no change in the tariff in 2005-06 budget.

2. Though the relief is worded in wide terms, we are not inclined to consider that aspect. Suffice it to say that the learned counsel for the petitioner submits that the product of the petitioner falls in an exempted category and to that extent the Superintendent of Central Excise issued a show cause notice dated 9.3.2005, to which the petitioner submitted a detailed explanation giving justification to the effect that it is not excisable by the Central Excise Act, but, however, no final orders are passed by the Superintendent of Central Excise and in the meanwhile coercive steps have been taken and the vehicles of the petitioner were seized. Therefore he seeks appropriate directions in this regard.

3. On the other hand the learned Standing Counsel for Central Government submits that the authorities have already informed the petitioner that the product of the petitioner is excisable item and the excise duty is leviable at 16% and education cess at 2% and therefore it is open for the petitioner to challenge the same in an appeal under the provisions of the Central Excise Act, but it cannot approach this Court for appropriate relief.

4. We are not inclined to record any finding on the merits of the case. Suffice it to say that in response to the notice dated 9.3.2005, the petitioner submitted a detailed explanation, but no final orders have been passed.

5. Under these circumstances, we dispose of the Writ Petition with the following directions:

1. The Superintendent of Central Excise shall pass appropriate orders in response to the notice issued on 9.3.2005, if not

already passed, within a period of two (02) weeks from the date of receipt of a copy of this order.

2. Pending orders to be passed by the Superintendent of Central Excise, the respondents are directed not to take any coercive steps.

3. The vehicles already seized shall be released on furnishing an undertaking by the petitioner that the vehicles shall not be sold and that no charge will be created over the vehicles, pending final orders.

4. It is also directed that the petitioner shall maintain the production of the factory each day so as to ensure the quantity of production in case the excise duty is leviable on the said production.

There shall be no order as to costs.

(G.BIKSHAPATHY, J.)

8th April, 2005.

(P.S.NARAYANA, J.)

SSR

Issue copy by Monday.

(BO)

To

1 The Secretary, Ministry of Finance, Union of India, New Delhi.
2 The Chief Commissioner, Customs & Central Excise, South Zone, Visakhapatnam.
3 The Commissioner of Customs & Central Excise, Tirupathi (Holding addl. Charge of
Guntur Commissionarate)
4 The Assistant Commissioner, Customs & Central Excise, Guntur Division, 2/17, Brodipet, Opp.B.H.College, Guntur.
5 The Superintendent of Central Excise, Range-I, 2/17, Bridipet, Guntur.

6 2 CD copies